

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

WINN BROWN,	:	Case No. 3:17-CV-00397
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
TRUEACCORD CORP., et al.,	:	
	:	
Defendants.	:	
	:	

ANSWER OF DEFENDANT SILVER CLOUD FINANCIAL, INC.

Now comes Defendant Silver Cloud Financial, Inc. (“Silver Cloud”), by and through the undersigned counsel, and for its Answer to Plaintiff Winn Brown’s (“Brown”) Complaint states:

FIRST DEFENSE

1. Paragraph 1 of the Complaint states Brown’s characterization of the Complaint and the law, to which no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 1.

JURISDICTION AND VENUE

2. Silver Cloud denies the allegations in Paragraph 2 of the Complaint.

PARTIES

3. Silver Cloud denies the allegations in Paragraph 3 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

4. Silver Cloud denies the allegations in Paragraph 4 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

5. In response to Paragraph 5 of the Complaint, Silver Cloud admits its mailing address is 635 East Hwy 20, C, Upper Lake, California 95485, and denies the remaining allegation in Paragraph 5.

6. Paragraph 6 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 6.

7. Paragraph 7 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 7.

FACTUAL ALLEGATIONS

8. In response to Paragraph 8 of the Complaint, Silver Cloud admits Defendant TrueAccord Corp. (“TAC”) attempted to collect a debt owed to Silver Cloud by Plaintiff.

9. Silver Cloud denies the allegations in Paragraph 9 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

10. Silver Cloud denies the allegations in Paragraph 10 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

11. In response to Paragraph 11 of the Complaint, Silver Cloud states that any statements purportedly made in an agreement speak for themselves. Further, Silver Cloud denies that it made any statements in any written settlement agreement between Silver Cloud and Brown. Silver Cloud denies the remaining allegations in Paragraph 11 for lack of knowledge or information sufficient to form a belief as to the truth of the same.

12. Silver Cloud denies the allegations in Paragraph 12 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

13. Silver Cloud denies the allegations in Paragraph 13 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

14. In response to Paragraph 14 of the Complaint, Silver Cloud denies that it “accepted” and “deposited” any payments. Silver Cloud denies the remaining allegations in Paragraph 14 for lack of knowledge or information sufficient to form a belief as to the truth of the same.

15. Silver Cloud denies the allegations in Paragraph 15 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

16. Silver Cloud denies the allegations in Paragraph 16 of the Complaint.

17. Paragraph 17 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 17.

18. Silver Cloud denies the allegations in Paragraph 18 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

19. In response to Paragraph 19 of the Complaint, Silver Cloud denies any of its agents, servants, and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of Silver Cloud, had any connection to the events described in Brown’s Complaint. Silver Cloud denies the remaining allegations in Paragraph 19 for lack of knowledge or information sufficient to form a belief as to the truth of the same.

20. In response to Paragraph 20 of the Complaint, Silver Cloud denies that any actions of its agents, servants and/or employees were malicious, intentional, willful, reckless, negligent, or in wanton disregard for federal law and the rights of Brown. Silver Cloud denies

the remaining allegations in Paragraph 20 for lack of knowledge or information sufficient to form a belief as to the truth of the same.

21. Silver Cloud denies the allegations in Paragraph 21 of the Complaint.

FIRST CLAIM FOR RELIEF

22. Silver Cloud incorporates its responses to Paragraphs 1 through 21 of the Complaint as if fully set forth herein.

23. In response to Paragraph 23 of the Complaint, Silver Cloud denies that it made any written statements acknowledging a settlement agreement or that any such agreement was supported by consideration. Silver Cloud denies the remaining allegations in Paragraph 23 for lack of knowledge or information sufficient to form a belief as to the truth of the same.

24. In response to Paragraph 24 of the Complaint, Silver Cloud denies it “accepted and cashed” any payments. Silver Cloud denies the remaining allegations in Paragraph 24 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

25. Silver Cloud denies the allegations in Paragraph 25 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

26. Silver Cloud denies the allegations in Paragraph 26 of the Complaint.

27. Silver Cloud denies the allegations in Paragraph 27 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the same.

SECOND CLAIM FOR RELIEF

28. Silver Cloud incorporates its responses to Paragraphs 1 through 27 of the Complaint as if fully set forth herein.

29. Paragraph 29 of the Complaint sets forth no allegation against Silver Cloud and therefore no response is required. Further, Paragraph 29 states a legal conclusion and therefore no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 29 of the Complaint.

30. In response to Paragraph 30 of the Complaint, Silver Cloud states the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(10), speaks for itself and therefore no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 30.

31. Paragraph 31 of the Complaint sets forth no allegation against Silver Cloud and therefore no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 31 of the Complaint.

32. Paragraph 32 of the Complaint sets forth no allegation against Silver Cloud and therefore no response is required. To the extent a response is required, Silver Cloud denies the allegations in Paragraph 32 of the Complaint.

33. To the extent not specifically admitted herein, Silver Cloud denies each and every allegation in Brown's Complaint.

34. Silver Cloud denies that Brown is entitled to any of the relief sought in the prayer for relief at the end of the Complaint.

AFFIRMATIVE DEFENSES

In order to preserve its defenses and pending the completion of discovery, Silver Cloud submits the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Brown's Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Venue may not be proper.

THIRD AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction to adjudicate claims against Silver Cloud because Silver Cloud is entitled to tribal immunity.

FOURTH AFFIRMATIVE DEFENSE

This Court lacks personal jurisdiction to adjudicate claims against Silver Cloud because Silver Cloud is entitled to tribal immunity.

FIFTH AFFIRMATIVE DEFENSE

Brown's claims against Silver Cloud fail for lack of privity of contract.

SIXTH AFFIRMATIVE DEFENSE

Brown's claims are barred by the doctrines of unclean hands, waiver, laches, and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Brown's claims against Silver Cloud fail for lack of consideration.

EIGHTH AFFIRMATIVE DEFENSE

Brown failed to mitigate damages and losses, and therefore any alleged damages, which Silver Cloud denies exists, must be barred or reduced accordingly.

NINTH AFFIRMATIVE DEFENSE

Should a contract exist between Brown and Silver Cloud, which is expressly denied, Silver Cloud's performance under the contract is excused due to the Brown's breach of contract and failure to perform.

TENTH AFFIRMATIVE DEFENSE

Brown's claims are subject to setoff against monies owed to Silver Cloud by Brown.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to attach a copy of the contracts/documents it relies upon to support its claims.

TWELFTH AFFIRMATIVE DEFENSE

Silver Cloud reserves the right to raise and assert additional affirmative defenses to the claims alleged in Brown's Complaint as they become known or are revealed during the course of discovery and/or trial herein.

WHEREFORE, Silver Cloud requests that Brown's Complaint be dismissed with prejudice and that Silver Cloud be awarded its costs and fees as well as any other relief to which it is entitled and/or the Court deems appropriate.

Respectfully Submitted,

/s/ William M. Mattes

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Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document, Answer of Defendant Silver Cloud Financial, Inc., was served upon the parties by the Court's CM/ECF service to all counsel of record on this 9th day of January, 2018.

/s/ *William M. Mattes*

William M. Mattes (#0040465)

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